

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON APPROPRIATIONS**

**Call to Order:** By **VICE CHAIRMAN CAROL C. JUNEAU**, on February 7, 2005 at 3:30 P.M., in Room 102 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Carol C. Juneau, Vice Chairman (D)  
Rep. John E. Witt, Vice Chairman (R)  
Rep. Tim Callahan (D)  
Rep. Eve Franklin (D)  
Rep. Bill E. Glaser (R)  
Rep. Ray Hawk (R)  
Rep. Cynthia Hiner (D)  
Rep. Verdell Jackson (R)  
Rep. Joey Jayne (D)  
Rep. Ralph L. Lenhart (D)  
Rep. Walter McNutt (R)  
Rep. John L. Musgrove (D)  
Rep. Rick Ripley (R)  
Rep. Jon C. Sesso (D)  
Rep. John Sinrud (R)  
Rep. Janna Taylor (R)  
Rep. Jack Wells (R)

**Members Excused:** Rep. Rosalie (Rosie) Buzzas, Chairman (D)

**Members Absent:** Rep. Christine Kaufmann (D)  
Rep. Penny Morgan (R)

**Staff Present:** Marcy McLean, Committee Secretary  
Jon Moe, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 170, 2/3/2005; HB 499, 2/3/2005;  
HB 239, 2/3/2005  
Executive Action: None

**HEARING ON HB 170****Opening Statement by Sponsor:**

**REP. BILL WILSON, HD 22, Great Falls**, opened the hearing on **HB 170**, to make technical corrections to the law clarify fund transfers for certain vehicle taxes and fees. In the 2003 session the "toys" bill, allowing lifetime registration of certain recreation vehicles, was passed in the finals days and helped to balance the budget. Consequently, there have been some problems with the bill. HB 170 would correct errors in how fees are allocated. HB 170 was on the Consent Calendar, but because money was being moved around, it was referred to Appropriations. [EXHIBIT \(aph30a01\)](#)

**Proponents' Testimony:**

**Bob Gilbert, Walleyes Unlimited, Montana Weed Control Association, Montana Snowmobile Association**, said the bill is trying to put into effect what the legislative intent was during the last session.

*{Tape: 1; Side: A; Approx. Time Counter: 0 - 6.3}*

**Doug Monger, Fish, Wildlife and Parks**, said they are affected by this bill because funding from these vehicles is passed through to local projects to improve boating, snowmobiling, etc. However, they currently have problems in the law getting these funds out to organizations that do the trail projects. It was clearly the intent of the 2003 Legislature that the funds go to these organizations.

**Dan McGowan, Montana Disaster Emergency Services**, said HB 170 is necessary to allow them to administer the funds for search and rescue operations and training.

**HEARING ON HB 499****Opening Statement by Sponsor:**

**REP. VERONICA SMALL-EASTMAN, HD 42, Lodge Grass**, opened the hearing on **HB 499**, to appropriate money to the Montana Coal Board to study, and preserve the pavement, of roads used to haul coal. Coal is hauled from the mine to the Hardin Power Plant. Two years ago, Montana Dakota Utilities (MDU) created Centennial Energy Resources to build an independent power plant, which is known as the Hardin Power Plant. Construction of this plant is ongoing, employing 100 workers. MDU has signed a three-year contract to sell all of the power to a Canadian company, with a

two-year extension to sell 160 megawatts of electricity to BC Hydro, Canada's third largest electric utility, which serves 150 customers in the United States' pacific northwest region. The Hardin Power Plant will produce 5% of the 110 megawatts of electricity generated at the massive Colstrip complex. Eventually, the power plant will employ 30-40 full-time employees.

The power plant has a three-year contract with Westmoreland Absolaka Coal Mine for coal as their energy source of fuel. The coal will be locally mined east of Hardin and hauled by coal trucks to the Hardin Power Plant, a 60-mile round trip, 24 hours a day, seven days a week. Secondary Highway 384, also known as Sarpy Creek Road, cannot handle this traffic because it was not engineered to handle the weight and impact of coal trucks. Everyone involved agrees that because there is no room to store the coal, the power plant will burn the coal as it is hauled to the plant. Significant competition from the State of Wyoming also poses a threat. Wyoming has a rail spur they could use and are trying to bid for the coal.

***{Tape: 1; Side: A; Approx. Time Counter: 6.3 - 15; Comments: Rep. Kaufmann entered hearing.}***

HB 499 is asking for \$1.0 million. It does not affect the State Library, Conservation Districts, nor Growth Thru Ag; these three groups get their money from the Coal Tax Board shared accounts.

[EXHIBIT\(aph30a02\)](#)

[EXHIBIT\(aph30a03\)](#)

[EXHIBIT\(aph30a04\)](#)

#### **Proponents' Testimony:**

**Chad Fenter, Big Horn County Commissioner**, reviewed a map of the area referred to in HB 499. The Hardin Power Plant is on schedule to be operating in November-December 2005. From the mine to the power plant is 30 miles and their concerns are the first 1.5 miles from the power plant, until it joins with the state highway, and the last 2.4 miles from Highway 384 into the plant mine. The safety issues include the bridge at Sarpy Creek, blind corners, one-way traffic at the railroad trussel, and a 7% grade. They anticipate the coal trucks will be making 40 round trips per day and they are concerned about the safety of the miners and of the families who live along this route.

Funding from HB 499 would help ensure the safety and well-being of the county residents. It also would ensure the long-term coal sales, the employment at the Absaloka Mine, and a new power plant that creates 30 well-paid jobs. Over the years, millions of tons

of coal have been mined from Big Horn County, resulting in millions of dollars in tax dollars to the State of Montana.

[EXHIBIT\(aph30a05\)](#)

[EXHIBIT\(aph30a06\)](#)

***{Tape: 1; Side: A; Approx. Time Counter: 15 - 20.8}***

**Cedric Black Eagle, Vice Chairman, Crow Tribe**, said Westmoreland Resources is mining tribal and state owned coal. The Crow Tribe's interest is in the safety of its tribal and non-tribal members working at the mine, the residents of the Sarpy Creek area, and the trucks hauling the coal. Westmoreland has contributed over \$58 million in severance taxes to the State; interest on these taxes has amounted to over \$400 million. State Highway 384 needs lots of work.

**Jim Mockler, Montana Coal Council**, said over the last 30 years there have been hundreds of millions tons of coal mined in Big Horn County. Other than a few miles of road, the mining of this coal has had zero cost to the State of Montana. Yet the State has collected over a million dollars in taxes and royalties from these coal mines. This is an opportunity and an obligation for the State to help Big Horn County. The Hardin Power Plant is not a done deal; the contract is not yet signed and they still have the option to go to Wyoming to buy the coal.

**Willie Duffield, Montana Association of Oil and Gas Counties**, said the coal severance tax should be used for impacts such as this. They don't want the other projects in the coal severance shared account have to lose funding, so they hope the Committee will find other revenue to fund this road project. He said they feel passage of HB 499 will benefit all of Montana.

**John Alke, Montana Dakota Resources Group**, said their subsidiary, Centennial Energy Holding, is the developer of the Hardin Power Plant. When completed, it will employ 70 full-time employees (including those hauling the coal), and at the peak of construction will employ 300-400. This is a good project for southeast Montana.

***{Tape: 1; Side: A; Approx. Time Counter: 20.8 - 26.2}***

**Matt Redden, Big Horn County Road Supervisor**, said both ends of Highway 384 are a liability issue; they are not set up for truck traffic. Passage of HB 499 would allow them to get this road up to code.

**Sandy Watts, President of Custer Country**, said they supports HB 499 for the tourism industry. While Highway 384 is primarily used for mine people, if improved it would be used by RV people.

It's a great road to travel for scenic beauty and wildlife viewing.

**Opponents' Testimony:**

**Sarah Carlson, Montana Association of Conservation Districts,** said she is an "opponent I think". Her interpretation of the bill, citing lines 11-12, is that \$1 million would be taken from the coal severance tax shared special revenue account. If so, that would affect the Conservation Districts, State Library, and Growth Thru Ag. If that is not what the sponsor intends and she wants to give the money only from the just from the Coal Board part of the shared account, then the Conservation Districts would not oppose this bill. If an amendment is added to accomplish this, then they would support the bill.

There are eight programs of the Conservation District that are affected by the shared coal account; three of them are fully funded by the shared coal account and five of them are partially funded. Taking \$1 million out of the shared special revenue account would be detrimental to these programs.

**EXHIBIT**(aph30a07)

***{Tape: 1; Side: A; Approx. Time Counter: 26.2 - 32.6; Comments: End of Side A.}***

**Jane Holzer, Montana Salinity Control Association,** said they have been funded by the Legislature since 1979, being fully funded by the shared coal account. They work in 33 counties, including Big Horn, helping with saline, soil, and water reclamation.

**Gayla Wortman, Missouri River Conservation Districts Council,** said this bill, as written, is confusing.

**EXHIBIT**(aph30a08)

***{Tape: 1; Side: B; Approx. Time Counter: 0 - 2; Comments: Rep. Morgan entered hearing.}***

Their Council is made up of supervisors elected to serve their conservation districts. Their purpose is to represent natural resource and environmental interest on the Missouri River through grass roots efforts, education incentives and voluntary action. They lead grass roots conservation efforts on the 800,000 acres of private ownership along the Missouri River, and must not be hamstrung by the loss of vital programs funded by the shared coal account. They oppose HB 499, as written, because it eliminates the funding for the Rangeland Resource Program, Salinity Control, 223 Program, Conservation Districts administration, and watershed planning and assistance. All of these programs have been widely

used along the Missouri River corridor. There are 15 districts along the Missouri River; there are 58 conservation districts statewide that rely on the coal shared account to continue the work vital to the preservation of Montana's natural resources.

**Les Gilman, Rangeland Resource Executive Committee**, said the Rangeland Resource program would be eliminated if \$1.0 million was taken from the coal shared account to fund HB 499. This program was established in the late 1970's to provide a voice for the nearly 70% of Montana's rangeland.

**Mark Gornick, Jefferson Valley Conservation District**, said his favorite program through the Conservation District is the 223 Grant. They sponsor a Youth Education Day that involves 200-300 6th graders. The kids spend a day outdoors learning about bio-control of weeds, fishing habitat, rangeland programs, and forestry. Funding of HB 499 would cut funds available to support this program.

**Harold Zeiler, Yellowstone Conservation District**, said he is concerned about where the funding will come from for HB 499. If Conservation Districts have to take the brunt of this funding, it would be devastating to their districts.

**Bob Hector, Yellowstone Conservation District**, said they are mandated by the State to look after the streambed and land preservation. They have over 75 miles of Yellowstone River, plus its tributaries, that they are responsible for. They have many issues to deal with and they rely on technical and legal support from the conservation district group in Helena. There would be a great deal of consequences throughout the state if funding for conservation districts was cut.

**Informational Testimony:**

**Ray Beck, DNRC and Mark Bruno, Governor's Budget Office**, rose to say they were available to answer questions.

**Dave Cole, Department of Commerce**, said his department provides staff support to the Coal Board. There are four programs funded through the shared account: Coal Board, Conservation Districts, Growth Through Ag, and State Library. During fiscal years 2004-2005, they received 35 grant applications, of which 19 (totaling over \$1.4 million) were granted. Grant amounts ranged from \$6,000 to \$201,000.

The sponsor of HB 499 has clarified that it is her intent that the money come from the Coal Board, which would rapidly deplete

their funds. They are working on a fiscal note with the Governor's Budget Office that lays out two alternatives:

Option 1 - If the \$1.0 million came from the shared account as a whole, it would reduce the Coal Boards funds by \$352,362. Under this option, they would fund approximately four to five fewer projects.

Option 2 - If the \$1.0 million came solely from the appropriation for the Coal Board, they would only have \$567,000 left to award for local impact grants. They estimate they would fund approximately 13 fewer projects.

**EXHIBIT**(aph30a09)

**Questions from Committee Members and Responses:**

**REP. SESSO** said based upon all the information they've just heard, the Committee needs to be told who's right and who's wrong. **Rep. Small-Eastman** said her intent is for the money to come from the Coal Board. She said she has another bill that would lock in the percentages for the Coal Board, Growth Thru Ag, Conservation Districts, and State Library so they would be guaranteed of their percentage of the shared account.

**REP. SESSO** followed-up by asking if the current percentages allocated to the three entities (as shown in Exhibit 3) in the shared account would remain the same. **Rep. Small-Eastman** said this was the first time she had seen those percentages and they are different than the percentages listed on HB 499. She would like to confer with others to decide what the percentages should be.

**REP. SESSO** asked for further clarification from the Governor's Budget Office and the DNRC. He also asked how this office would ensure the three other entities are not hurt. **Mark Bruno** explained Exhibit 3 by saying the \$4.8 million for the 2007 biennium comes from the Governor's budget, but it's percentage allocations are not laid out in statute. The funding for the four programs is very similar to how they were funded in the 2003 session.

***{Tape: 1; Side: B; Approx. Time Counter: 2 - 23.4}***

**Ray Beck** said to avoid impacting the other three programs, in Line 12 strike out the text after "\$1.0 million" through to "15-35-108(3)," and in Line 11 change the words "appropriated to" to "appropriated from." That would do most of what they are trying to accomplish. Through the appropriations subcommittees, these

accounts would be reviewed and the percentages could be adhered to; although locked-in percentages does not give the subcommittees much flexibility.

**REP. RIPLEY** said currently we are over allocated in the shared account by \$156,000. Rep. Lindeen has a bill that raises the contribution from the Coal Severance Tax to the Shared State Special Revenue Account from 7.75% back to the original 8.4%.

**Ray Beck** said that is HB 482 and it would raise the contribution rate to the original 8.36%. It is estimated that would amount to a \$350 million increase to that account.

**REP. WITT** asked about Rep. Small-Eastman's other bill that would lock in the percentages to the programs in the coal shared account, and would they be a one-time or an on-going percentage.

**Rep. Small-Eastman** said she would lock it in so they are guaranteed that amount all the time, whether the contribution rate from the coal severance taxes remains at the 7.75% or goes up to the 8.36%. It would allow them to do a better job of budgeting for their future needs.

**REP. WITT** asked what's happening to the road mill levy in Big Horn County. **Chad Fenter** said he did not have exact figures with him, but the mill levy is not increasing. They have about 1,200 square miles of county roads. He also said they are not trying to take money from the other three programs. But in fact, a lot of these programs would not be in existence if it wasn't for the coal tax. It would not be fair to the residents of Big Horn County to raise their taxes to pay for the power plant's effect on the roads.

*{Tape: 1; Side: B; Approx. Time Counter: 23.4 - 32.6; Comments: End of Tape 1}*

**REP. KAUFMANN** asked if Big Horn County has applied to the Coal Board, through the regular procedures, for the road funding. **Jim Mockler** said they could apply through this route, but he doesn't know if they have. He said he could support funding through this process, although he thinks it would be appropriate for the funding to come from the general fund.

**REP. HAWK** asked if the bill is appropriating money to study the effects of the coal hauling and the repair of the road. **REP. SMALL-EASTMAN** said that the \$1 million is for the engineering study and the construction of the road to make it safer. The \$1 million estimate is based upon the amount of construction costs to the Decker Coal Road.



**REP. GLASER** asked where the \$1.65 million appropriation for the Coal Board is going to be used. **Dave Cole, Department of Commerce**, said that once the funds are appropriated, the Coal Board accepts applications for assistance. These applications are reviewed by the seven members of the Coal Board, according to statutory criteria, and awarded throughout the biennium. These funds are not earmarked for any particular project.

**REP. GLASER** pointed out that last year Big Horn County Hospital and Lodge Grass School were awarded \$350,000. He asked if they were to receive \$1 million from the Coal Board for repair to Sarpy Creek Road, would they be asking for any more money. **Chad Fenter** said he could not speak for the cities and the other entities in Big Horn County.

*{Tape: 2; Side: A; Approx. Time Counter: 0 - 9.2}*

**REP. SESSO** asked if Sarpy Creek Road is a state classified road and what the estimated construction costs would be. **Matt Redden** said that the middle section of the road is state classified, but the rest is county. He said it would be difficult to estimate the construction costs since no survey work has been done yet.

**REP. KAUFMANN** asked if Big Horn County has applied for this project through the Coal Board. **Chad Fenter** answered, "No". The Hardin Power Plant has been an accelerated project and it has been undecided whether they would get their coal from Montana or from Wyoming. Therefore, in the past couple of weeks they had asked **REP. SMALL-EASTMAN** to hold this bill open for the purpose of securing the funding to repair the road.

**REP. KAUFMANN** asked if there was anything to prevent Big Horn County from bringing this project to the Coal Board to request funding. **Dave Cole** said this would be an eligible project.

**REP. SINRUD** asked if \$1 million would be enough to do construction work on Sarpy Creek Road, since a road project between Big Timber and Harlowton cost \$1 million/mile. **Chad Fenter** said based upon the Department of Transportation's projected overlay project on this road, the \$1 million funding would be sufficient. They are not asking for funding to rebuild the 3.9 miles of Sarpy Creek Road, they are just asking for funding to recondition the existing road.

**Closing by Sponsor:**

**REP. SMALL-EASTMAN** reiterated that they do not want to hurt the other three projects funded through the Coal Tax Board shared funding account. **REPS. MCNUTT** and **LINDEEN** both have bills involving the Coal Board, and the three of them should work

together to ensure that the other three projects are not hurt. She said that she would like to draft an amendment that would direct any overflow from the four shared accounts to the Coal Board and not back to the General Fund. Also, she may draft an amendment to appropriate the \$1.0 million directly from the general fund.

Coal mining has provided a lot of tax revenue over the years. Sarpy Creek/Absaloka Coal Mine mines six million tons of coal each year. Tax revenue will be generated from both the coal mine and from the power plant. Perhaps other programs need to tighten their belts over the next two years in order to provide for this road funding. The road upgrade is necessary in order for the Hardin Power Plant to be able to use the coal from the Absaloka Mine; if not, then they will be hauling their coal in from Wyoming.

**{Tape: 2; Side: A; Approx. Time Counter: 9.2 - 24.3}**

#### **HEARING ON HB 239**

#### **Opening Statement by Sponsor:**

**REP. DEE BROWN, HD 3, Hungry Horse**, opened the hearing on **HB 239**, a bill to provide a minimum benefit for retired disabled teachers. This bill was requested by a constituent who is a disabled teacher. This teacher taught for 15 years and had brain cancer, requiring him to quit teaching. HB 239 assures that any retired teacher, who quit because of a disability prior to reaching 25 years of service, would receive a minimum teacher's retirement check of \$500.

**Proponents' Testimony:** None

**Opponents' Testimony:** None

#### **Informational Testimony:**

**David Senn, Montana Teachers Retirement System**, said there are only 118 disability recipients who would be eligible under HB 239. Their average benefit increase would be \$138/month, and the largest increase would be \$338/month. The average years of service for this group is 11.65 years.

#### **Questions from Committee Members and Responses:**

**REP. MORGAN** asked where the \$121,000 increase, as stated in the fiscal note, was coming from. **REP. BROWN** answered that it was

from the .02% increase to the school districts' contribution rate.

**Closing by Sponsor:**

**REP. BROWN** said for 118 people to enjoy an additional \$138/month, it is the least the state could do for them.

**EXHIBIT** (aph30a10)

(NOTE: Exhibit 10 was delivered 2/8/05)

**ADJOURNMENT**

Adjournment: 5:05 P.M.

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REP. ROSALIE (ROSIE) BUZZAS, Chairman

\_\_\_\_\_  
MARCY MCLEAN, Secretary

RB/mm

Additional Exhibits:

**EXHIBIT ([aph30aad0.TIF](#))**